

ORIGINAL

1 JOHN WILLIAM KIRK, ESQ.
Nevada Bar No. 4654
2 PHILLIPS, SPALLAS & ANGSTADT LLC
211 North Buffalo Drive, Suite E
3 Las Vegas, Nevada 89145
(702) 938-1510
4 *Attorneys for Defendant,*
Wal-Mart Stores, Inc.

FILED 06/29/05

MJ

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6
7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA
9

10 CV-S-05-0799-HDM-PAL

11 CAROLYN ROSSI,

12 Plaintiff

13 vs.

(District Court Case No. A504765
Dept. No. XXI)

14 AARON WILLIAMS, an individual; WAL-
15 MART STORES, INC., a Delaware
Corporation, d/b/a WAL-MART
16 SUPERCENTER #2838, Does 1 through 10,
ROE CORPORATIONS 1 through 10,
17 inclusive.

18 Defendants.

19
20 **PETITION FOR REMOVAL OF CIVIL ACTION**

21 COMES NOW, Petitioner, WAL-MART STORES, INC., by and through their attorney,
22 JOHN WILLIAM KIRK, ESQ., of the law offices of PHILLIPS, SPALLAS & ANGSTADT, LLC,
23 hereby submit and respectfully show:

24 I.

25 Petitioner WAL-MART STORE, INC. is the Defendant in the above-entitled action.

26 II.

27 The above-entitled action was commenced in the Eighth Judicial District Court in and for
28 Clark County, District of Nevada, and is now pending in that Court. Process was served upon

1 this Petitioner through a process server on or about June 3, 2005. A copy of the Summons and
2 Complaint are attached as Exhibits "A" and "B," respectively.

3
4 III.

5 This Petition is filed timely pursuant to 28 U.S.C. § 1446(b).

6 IV.

7 This action is a civil action of which this Court has diversity jurisdiction under the provisions
8 of 28 U.S.C. § 1332 and 28 U.S.C. § 2201, and is one which may be removed to this Court by
9 Petitioner, pursuant to the provisions of 28 U.S.C. § 1441(b).

10 V.

11 Petitioner is informed, believes and thereon alleges that Plaintiff, CAROLYN ROSSI, is and
12 was at all times relevant herein, resident of the State of Nevada.

13 VI.

14 Petitioner WAL-MART STORES, INC. is, and was at the time this action was commenced,
15 a Delaware corporation duly licenses to do business in the State of Nevada.

16 VII.

17 The above-entitled civil action is for personal injuries Plaintiff allegedly received from an
18 incident at Wal-Mart.

19 VIII.

20 A copy of the Defendant's Petition for Removal, seeking removal of the above-entitled action
21 to the United States District Court, District of Nevada, together with a copy of the Summons and
22 Complaint, have been deposited with the Deputy Clerk in the County Clerk's office for the Eighth
23 Judicial District Court in and for Clark County, Nevada.

24 IX.

25 Copies of all pleadings and papers served upon Petitioner in the above-entitled action are
26 filed herewith.

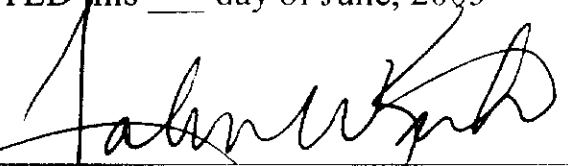
27 X.

28 This Petition is filed with this Court within thirty (30) days after receipt of this Petitioner
of the Summons and Complaint in the above-entitled action.

PRAYER

WHEREFORE, Petitioner WAL-MART STORES, INC., prays that the above-entitled action be removed from the Eighth Judicial District Court in and for Clark County, Nevada to this Court.

28th
DATED this ____ day of June, 2005



JOHN WILLIAM KIRK, ESQ.

Nevada Bar No. 004654

PHILLIPS, SPALLAS & ANGSTADT, LLC

211 N. Buffalo, Suite E

Las Vegas, Nevada 89145

Phone: (702) 938-1510

Fax: (702) 938-1511

*Attorneys for Defendant
Wal-Mart Stores, Inc.*

AFFIDAVIT OF JOHN WILLIAM KIRK, ESQ.

STATE OF NEVADA)
COUNTY OF CLARK)ss.
)

JOHN WILLIAM KIRK, ESQ., first being duly sworn, deposes and states as follows:

1. Affiant is an attorney, duly licensed and authorized to practice law within the courts of the State of Nevada.
2. Affiant is a member of the law firm of PHILLIPS, SPALLAS & ANGSTADT LLP, representing Petitioners, WAL-MART STORES, INC., in the case of Carolyn Rossi v. Wal-Mart Stores, Inc. et al., Clark County District Court Case No. A504765, filed in Department No. XXI, of the Eighth Judicial District Court, in and for Clark County, Nevada. Affiant has prepared and read the foregoing *Petition for Removal of Civil Action* and knows the matters set forth to be true and correct to the best of her knowledge and belief.
3. On June 28, 2005, Affiant caused to be filed with the County Clerk of the Eighth Judicial District Court, in and for Clark County, Nevada, a *Notice of Filing Petition for Removal*, seeking removal of the above-mentioned action to the United States District Court, District of Nevada, together with a copy of the *Petition for Removal*, Summons and Complaint, attached as Exhibits "A" and "B," and Request for Arbitration Exemption, attached as Exhibit "C", by depositing such copies with the Deputy Clerk in the County Clerk's Office, Clark County Courthouse, 200 South Third Street, Las Vegas, Nevada 89155.

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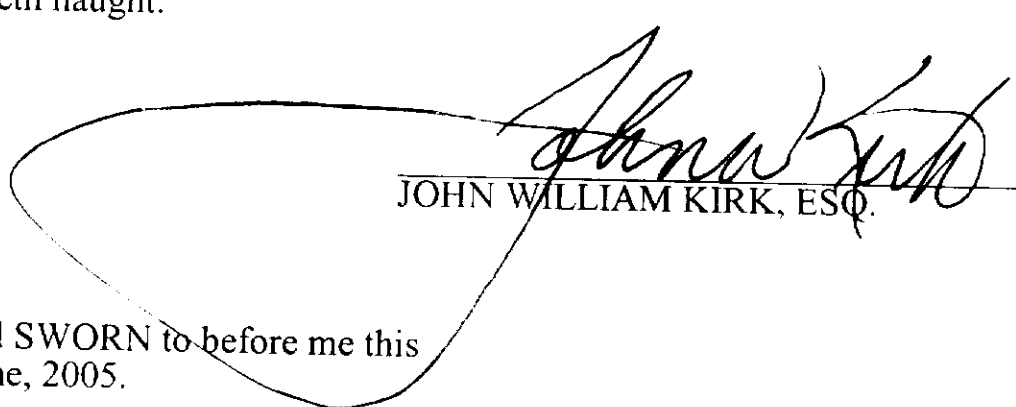
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1 4. Affiant caused to be served a copy of the *Notice of Filing Petition for Removal*
2 and the *Petition for Removal* upon Plaintiffs, by depositing it in the United States
3 Mail, on June 28, 2005 in an envelope properly addressed to:

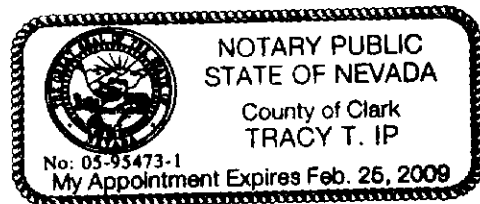
4 Carolyn Rossi
5 c/o W. Randall Mainor, Esq.
6 Bradley S. Mainor, Esq.
7 MAINOR EGLET COTTLE
400 South Fourth Street, Sixth Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiff

8 Affiant further sayeth naught.

9
10 
11 JOHN WILLIAM KIRK, ESQ.

12 SUBSCRIBED and SWORN to before me this
13 28th day of June, 2005.

14 
15 NOTARY PUBLIC in and for
16 said County and State



CERTIFICATE OF MAILING

I hereby certify that on the 28th day of June, 2005, I mailed a true and correct copy of the foregoing **PETITION FOR REMOVAL OF CIVIL ACTION** in a sealed envelope, first class postage fully prepaid, addressed to the following counsel of record at the following addresses:

ATTORNEY OF RECORD	PHONE/FAX	PARTY
W. RANDALL MAINOR, ESQ. BRADLEY S. MAINOR, ESQ. MAINOR EGLET & COTTLE 400 S. Fourth Street, 6 th Floor Las Vegas, Nevada 89101	(702) 450-5400 (phone) (702) 450-5451 (fax)	Plaintiff



An Employee of PHILLIPS, SPALLAS & ANGSTADT LLC

EXHIBIT A

CT CORPORATION
A WoltersKluwer Company

**Service of Process
Transmittal**

06/03/2005
Log Number 510270015

JG/AJT
197068

TO: Kim Lundy
Wal-Mart Stores, Inc.
702 SW 8th Street, Mail Stop #0215
Bentonville, AR, 72716

RE: Process Served In Nevada

FOR: Wal-Mart Stores, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Carolyn Rossi, Plff. vs. Aaron Williams, et al, Including Walmart Stores Inc., Defs

DOCUMENT(S) SERVED: Summons and Complaint

COURT/AGENCY: District Court, Clark County, Nevada, Clark, NV
Case # A504785

NATURE OF ACTION: Personal Injury - Failure to Maintain Premises in a Safe Condition - Personal injuries sustained on or about March 27, 2005 at Store #2838 at 540 Marks Street, Henderson, NV

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company of Nevada, Reno, NV

DATE AND HOUR OF SERVICE: By Process Server on 06/03/2005 at 09:30

APPEARANCE OR ANSWER DUE: 20 days

ATTORNEY(S) / SENDER(S): W. Randall Mainor Esq. 702-450-5400
Mainor Egle Cottle
400 South Fourth Street
Sixth Floor
Las Vegas, NV, 89101

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex Priority Overnight, 790533712234
Email Notification, Kim Lundy kim.lundy@wal-mart.com

SIGNED: The Corporation Trust Company of Nevada

ADDRESS: 8100 Neil Road
Suite 500
Reno, NV, 89511

TELEPHONE: 775-688-3081

RECEIVED
JUN 06 2005
Legal Intake By: _____

Page 1 of 1 / PM

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action.

9:30
6-3-05

SUMM

DISTRICT COURT
CLARK COUNTY, NEVADA

CAROLYN ROSSI,

Plaintiff,

vs.

AARON WILLIAMS, an Individual;
WAL-MART STORES, INC., a Delaware
corporation, doing business as WAL-MART
SUPERCENTER #2838, DOES 1 through 10,
ROE CORPORATIONS 1 through 10,
inclusive,

Defendants.

Case No.

Dept. No.

A 50 47 6 5

XXI

S U M M O N SNOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING
HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

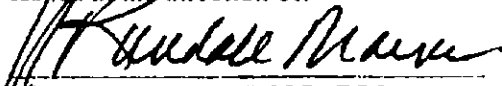
TO THE DEFENDANT:

WAL-MART STORES, INC., d/b/a WAL-MART SUPERCENTER #2838
c/o CORPORATION TRUST COMPANY OF NEVADA, Resident Agent
6100 Neil Road, Suite 500
Reno, Nevada 89511

A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:
 - a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.
 - b. Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Issued at the direction of:



W. RANDALL MAINOR, ESQ.

Nevada Bar No. 1318

BRADLEY S. MAINOR, ESQ.

Nevada Bar No. 7434

MAINOR EGLET COTTLE

400 S. Fourth St., Sixth Floor

Las Vegas, Nevada 89101

(702) 450-5400

SHIRLEY B. PARRAGUE, DISTRICT CLERK OF COURT
Brett Byline COURT MAY 31 2005

By:

Deputy Clerk Date
County Courthouse
200 South Third Street
Las Vegas, Nevada 89155

SEAL

STATE OF NEVADA)
)
 COUNTY OF CLARK)

ss.

AFFIDAVIT OF SERVICE

_____, being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. That affiant received _____ copy(ies) of the Summons and Complaint, _____

on the _____ day of _____, 2005, and served the same on the _____ day of _____, 2005 by:

(Affiant must complete the appropriate paragraph)

1. delivering and leaving a copy with the defendant _____ at _____
2. serve the defendant _____ by personally delivering and leaving a copy with _____, a person of suitable age and discretion residing at the defendant's usual place of abode located at _____

(Use paragraph 3 for serve upon agent, completing A or B)

3. serving the defendant _____ by personally delivering and leaving a copy at _____
 - a. With _____ as _____, an agent lawfully designated by statute to accept service of process;
 - b. With _____, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

4. personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope postage prepaid (check appropriate method):

_____ ordinary mail
 _____ certified mail, return receipt requested
 _____ registered mail, return receipt requested

addressed to the defendant _____ at the defendant's last known address which is _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2005.

 Signature of person making service

 NOTARY PUBLIC

EXHIBIT B

MAINOR EGLET COTTLE
ATTORNEYS

1 COMP

2 W. RANDALL MAINOR, ESQ.

3 Nevada Bar No. 1318

4 BRADLEY S. MAINOR, ESQ.

5 Nevada Bar No. 7434

6 MAINOR EGLET COTTLE

7 400 South Fourth St., Sixth Floor

8 Las Vegas, Nevada 89101

9 (702) 450-5400

10 Attorneys for Plaintiff CAROLYN ROSSI

FILED

MAY 31 4 24 PM '05

Shirley D. Mangione
CLERKDISTRICT COURT
CLARK COUNTY, NEVADA

11 CAROLYN ROSSI,

12 Plaintiff,

13 vs.

Case No.

Dept. No.

A504765

XXI

14 AARON WILLIAMS, an Individual;
15 WAL-MART STORES, INC., a Delaware
16 corporation, doing business as WAL-MART
17 SUPERCENTER #2838, DOES 1 through 10,
18 ROE CORPORATIONS 1 through 10,
19 inclusive,

Defendants.

COMPLAINTArbitration Exemption Claimed:
Damages in Excess of \$40,000.00

20 COMES NOW, Plaintiff, CAROLYN ROSSI, by and through her attorneys, W.

21 RANDALL MAINOR, ESQ., and BRADLEY S. MAINOR, ESQ., of the law firm of MAINOR
22 EGLET COTTLE, and for her claims for relief against Defendants, and each of them, alleges as
23 follows:
2425 1. That Plaintiff is, and at all times herein relevant was, a resident of the County of
26 Clark, State of Nevada.
27

28 / / /

MAINOR EGLET COTTLE
ATTORNEYS AT LAW

2. That Plaintiff is informed and believes, and thereupon alleges, that Defendant AARON WILLIAMS is, and at all times herein relevant was, a resident of the County of Clark, State of Nevada.

3. That Plaintiff is informed and believes, and thereupon alleges, that Defendant WAL-MART STORES, INC. is, and at all times herein relevant was, a corporation organized and existing under the laws of the State of Delaware, qualified to do business in the State of Nevada, and conducting business as WAL-MART SUPERCENTER #2838 at 540 Marks Street, Henderson, County of Clark, State of Nevada.

4. The true names and capacities of Defendants sued herein as DOES 1 through 10 and ROE CORPORATIONS 1 through 10, inclusive, are currently unknown to Plaintiff. Plaintiff is informed and believes, and on such information and belief alleges, each of the DOE and/or ROE CORPORATION Defendants is in some manner responsible for the acts, omissions and occurrences hereinafter alleged and that each of the DOE and/or ROE CORPORATION Defendants proximately caused the damages suffered by Plaintiff as herein alleged. Plaintiff will seek leave of Court to amend this Complaint when the true names and capacities of each of the DOE and ROE CORPORATION Defendants have been ascertained.

5. On or about March 27, 2004, and at all times herein mentioned, Defendants were the supervisors, employers, employees, security personnel of the premises and common areas generally known as WAL-MART SUPERCENTER #2838 located at 540 Marks Street, Henderson, County of Clark, State of Nevada.

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MAINOR EGLET COTTLE
TRIAL LAWYERS

1 6. On or about March 27, 2004, Defendants, while in the course and scope of their
2 employment and agency with the other Defendants, negligently failed to control, supervise and/or
3 conduct themselves in a manner for which Defendants had a duty toward Plaintiff, which caused
4 Plaintiff to suffer severe bodily injury, resulting in damage to her knee and causing her medical
5 expenses as a result of this altercation.
6

7 7. As a direct and proximate result of Defendants' negligence, Plaintiff was seriously
8 injured and caused to suffer great pain of body and mind, some of which conditions are
9 permanent and disabling, all to her general damage in an amount in excess of Ten Thousand
10 Dollars (\$10,000.00).
11

12 8. As a further direct and proximate result of Defendants' negligence, Plaintiff has
13 incurred, and will continue to incur, expenses for medical care and treatment, all to Plaintiff's
14 damage in a sum to be proven at trial.
15

16 9. As a further direct and proximate result of Defendants' negligence, Plaintiff has
17 sustained a loss of earnings and earning capacity.
18

19 10. Plaintiff has been required to retain the services of MAINOR EGLET COTTLE to
20 prosecute this action and is entitled to reasonable attorney fees and costs incurred herein.
21

22 WHEREFORE, Plaintiff prays for relief against Defendants, and each of them, as
23 follows:
24

- 25 1. General damages in an amount in excess of \$10,000.00;
- 26 2. Medical and incidental expenses incurred and to be incurred in a sum to be proven
27 at trial;
- 28 3. Damages for lost earnings and earning capacity;

/ / /

MAINOR EGLET COTTLE
ATTORNEYS AT LAW

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4. Attorney fees and costs incurred herein; and

5. For such other and further relief as the Court may deem just and proper in the premises.

DATED this 31 day of May, 2005.

MAINOR EGLET COTTLE

BY



W. RANDALL MAINOR, ESQ.
Nevada Bar No. 1318
BRADLEY S. MAINOR, ESQ.
Nevada Bar No. 7434
400 South Fourth St., Sixth Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiff

EXHIBIT C

1 **REA**
 2 W. RANDALL MAINOR, ESQ.
 3 Nevada Bar No. 1318
 4 BRADLEY S. MAINOR, ESQ.
 5 Nevada Bar No. 7434
 6 **MAINOR EGLET COTTLE**
 7 400 South Fourth St., Sixth Floor
 8 Las Vegas, Nevada 89101
 9 (702) 450-5400
 10 Attorneys for Plaintiff CAROLYN ROSSI

8 **DISTRICT COURT**
 9 **CLARK COUNTY, NEVADA**

10 CAROLYN ROSSI,)
 11)

12 Plaintiff,)

13 vs.)

Case No. A5047765

Dept. No. XXI

14 AARON WILLIAMS, an Individual;)
 15 WAL-MART STORES, INC., a Delaware)
 16 corporation, doing business as WAL-MART)
 17 SUPERCENTER #2838, DOES 1 through 10,)
 18 ROE CORPORATIONS 1 through 10,)
 19 inclusive,)

REQUEST FOR EXEMPTION
FROM ARBITRATION

20 Defendants.)
 21)
 22)

23 Plaintiff, CAROLYN ROSSI, hereby requests the above entitled matter be exempted
 24 from arbitration pursuant to Nevada Arbitration Rules 3 and 5 as this case:

- 25 1. Presents a significant issue of public policy;
- 26 2. X Involves an amount in excess of \$40,000.00 exclusive of interest and costs;
- 27 3. Presents unusual circumstances which constitute good cause for removal from the program.

28 A summary of the specific facts which support her contention for exemption is as follows:

1 This is an action for damages sustained by the Plaintiff as a result of an incident which
 2 occurred on or about March 27, 2004, at the Wal-Mart Supercenter #2838 at 540 Marks Street,
 3 Henderson, Nevada. Plaintiff sustained injuries including, but not limited to, right lateral
 4 femoral condyle fracture to the left knee.
 5

6 Plaintiff has suffered medical damages, including, but not limited to:

7	City of Henderson Ambulance	\$537.76
8	St. Rose Dominican Hospital-Siena	\$24,600.00
9	Radiology Associates of Nevada	\$649.00
10	Emergency Physicians	
11	Medical Group	\$304.80
12	Orthopaedic Institute of Henderson	\$5,652.00
13	Anesthesia Associates	\$1,275.00
14	Associated Pathologists	\$278.00
15	Louis F. Mortillaro, Ph.D.	\$2,645.00
16	HealthSouth	\$4,161.00
17	Witold J. Iglikowski, M.D.	\$681.00
18	Village East Drugs	\$314.75
19	Lab Medicine Consultants	\$328.00
20	Scott Parkhurst	<u>\$525.00</u>
21	TOTAL:	\$41,951.31

22
 23
 24 Plaintiff continues to treat for her injuries. Since her treatment is ongoing, it is
 25 impossible to detail the cost of Plaintiff's treatment at this time.
 26

27 I hereby certify, pursuant to N.R.C.P. 11, this case to be within the exemption(s) marked
 28 above and am aware of the sanctions which may be imposed against any attorney or party who

without good cause or justification attempts to remove a case from the arbitration program.

DATED this 24th day of June, 2005.

MAINOR EGLET COTTLE

By: 

W. RANDALL MAINOR, ESQ.
Nevada Bar No. 1318
400 South Fourth Street, Sixth Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that I am an employee of MAINOR EGLET COTTLE, and on the 24
day of June, 2005, I deposited in the United States Mails, postage prepaid, a true and correct copy
of the foregoing document addressed to:

John William Kirk, Esq.
PHILLIPS, SPALLAS & ANGSTADT, LLC
221 N. Buffalo Drive, Suite E
Las Vegas, Nevada 89145

That there is regular communication between the place of mailing and the place(s) so addressed.


An Employee of MAINOR EGLET COTTLE